THE HONOURABLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.19835 of 1996

DATED: 14.03.2007

Between:

S.G. Mohiuddin .. Petitioner

And

Union of India, rep. by its Secretary
For Home, South Block, New Delhi and others .. Respondents

THE HONOURABLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.19835 of 1996

ORDER:

This Writ Petition is filed for a Writ of Mandamus to declare the order of the 4th respondent vide proceedings No.P.VIIII-3/95-121-EC.II, dated 28.03.1996, which was confirmed by the order of the 3rd respondent in proceedings No.R.XIII-2/96-EC.II, dated 17.08.1996, as illegal, arbitrary, violative of principles of natural justice and Article 14 of the Constitution of India, and to set-aside the same by directing the respondents to give expost facto sanction, if necessary, for contracting second marriage and consequently, direct the respondents to reinstate the petitioner into service with all consequential benefits.

2. The petitioner, who was serving in the Central Reserve Police Force (for short 'C.R.P.F.') as a Pharmacist, was charge sheeted. In all, two charges were framed against him. They relate to the petitioner allegedly entering into a contract of second marriage with Miss. Haseena Begum, D/o. late Abdul Salem, on 31.10.1994, while his spouse Mrs. M.F.Farukha Begum, ASI (Pharmacist), was still alive and not legally divorced. The petitioner was ultimately removed from service with effect from 28.03.1996 vide proceedings No.P.VIII-3/95-121-EC.II. The said order was confirmed in appeal filed by the petitioner, vide orders passed by the 3rd respondent in his proceedings No.R.XIII-2/96-EC.III, dated 17.08.1996. Questioning these

proceedings, the present Writ Petition is filed.

3. At the commencement of the hearing of the case, Sri A.Rajashekar Reddy, learned Assistant Solicitor General, raised a contention that since the entire cause of action, on the basis of which the Writ Petition could be maintained, has taken place outside the territorial jurisdiction of this Court, this Writ Petition cannot be entertained. It is submitted that admittedly, the petitioner at the relevant point of time, was working in C.R.P.F. at Uddampur (Jammu & Kashmir) and that departmental enquiry was conducted at Uddampur. It was also stated that the order removing the petitioner from service was also passed at Uddampur and the appeal filed by the petitioner was dismissed by the 3rd respondent at Chandigarh.

4. Sri S.Krishna, learned counsel for the petitioner, submitted that the very charge on which the petitioner was removed from service related to his contracting second marriage, which admittedly, took place at Kurnool, and therefore, a part of cause of action has arisen within the territorial jurisdiction of this Court, and therefore, he pleads that this Court has territorial jurisdiction to entertain the Writ Petition.

5. In support of the contention of Sri A. Rajashekar Reddy, learned counsel for the respondents, that this Court has no jurisdiction to entertain the Writ Petition, he relied upon a judgment of the Supreme Court in **SOUTH EAST ASIA SHIPPING CO. LTD vs. NAV BHARAT ENTERPRISES PRIVATE LIMITED AND OTHERS**[1]**.** He laid particular emphasis on para 3, which, for the sake of convenience is extracted as hereunder:

> *"It is settled law that cause of action consists of bundle of facts which give cause to enforce the legal injury for redress in a Court of law. The cause of action means,*

therefore, every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action would possibly accrue or would arise. In view of the admitted position that contract was executed in Bombay, i.e., within the jurisdiction of the High Court of Bombay, performance of the contract was also to be done within the jurisdiction of the Bombay High Court, merely because bank guarantee was executed at Delhi and transmitted for performance to Bombay, it does not constitute a cause of action to give rise to the respondent to lay the suit on the original side of the Delhi High Court. The contention that the Division Bench was right in its finding and that since the bank guarantee was executed and liability was enforced from the bank at Delhi, the Court got jurisdiction, cannot be sustained."

6. Sri S.Krishna, learned counsel for the petitioner, relied upon the judgment in **NAVINCHANDRA N. MAJITHIA v. STATE OF MAHARASHTRA AND OTHERS**[2] in support of his contention, that since the petitioner contracting second marriage constitutes a part of cause of action, which ultimately lead to his removal from service, he is entitled to maintain the Writ Petition in this Court.

7. I have perused both the judgments. In **NAVINCHANDRA's** case (2 supra), the Division Bench of the Supreme Court referred to a case law relating to territorial jurisdiction based on cause of action including a three –Judge judgment in **OIL AND NATURAL GAS COMMISSION v. UTPAL KUMAR BASU (1994) 4 SCC 711**, wherein it was held "that the expression "cause of action" means that bundle of

facts which the petitioner must prove, if traversed to entitle him to a judgment in his favour." The question, as to whether any part of the act done by the petitioner by itself would constitute the cause of action, was not considered in the said judgment. However, in para 3 of the **SOUTH EAST ASIA SHIPPING CO. LTD.'s** case (1 supra) as extracted above, it specifically referred to this question and held that the term cause of action must include some act done by the defendant, since in the absence of such an act, no cause of action would possibly accrue or would arise. In view of this authoritative pronouncement of the Supreme Court, I am unable to accept the contention of the learned counsel for the petitioner that since a part of cause of action, namely, the contracting of second marriage by the petitioner has taken place at Kurnool, within the territorial jurisdiction of this Court, the Writ Petition is maintainable. Admittedly, no act of the respondents forming part of cause of action was committed within the territorial jurisdiction of this Court. In view of the aforementioned judgment of the Supreme Court in **SOUTH EAST ASIA SHIPPING CO. LTD.'s** case (1 supra), I have no other option than to dismiss the Writ Petition as not maintainable. It is however, left open to the petitioner to approach the appropriate Court for redressal of his grievance.

8. For the aforementioned reasons, the Writ Petition is dismissed. No costs.

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(**C.V.NAGARJUNA REDDY,J)**

14th March, 2007.
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[1] (1996) 3 SCC 443

[2] (2000) 7 Supreme Court Cases 640